
OLR Bill Analysis

sHB 5595

AN ACT CONCERNING COLLATERAL SOURCE PAYMENTS IN PERSONAL INJURY AND WRONGFUL DEATH ACTIONS AND REQUIRED DISCLOSURES UPON THE PURCHASE OF AN ANNUITY TO FUND PENSION BENEFITS.

SUMMARY:

Under certain conditions, this bill requires disclosures by insurers that issue annuity contracts to employers or employee pension benefit plans on an employer's behalf for employee retirement benefits. Among other conditions, the bill only applies to contracts that are not protected by the federal Pension Benefit Guaranty Corporation (PBGC). Under the bill, failure to provide the required disclosure is deemed an unfair and deceptive insurance practice (see BACKGROUND).

By law, in personal injury or wrongful death cases, courts must generally reduce economic damage awards by the amount the claimant received from health insurance or other collateral sources (see BACKGROUND). The bill specifies that payments from a managed care delivery system for Medicaid benefits are considered collateral sources for this purpose.

EFFECTIVE DATE: October 1, 2014, and the provision on the definition of "collateral sources" applies to actions pending on or filed on or after that date.

DISCLOSURES FOR PENSION PLAN ANNUITY CONTRACTS

Applicability

The bill requires insurers to provide certain disclosures when issuing annuity contracts to employers or employee pension benefit plans (as defined in the federal Employee Retirement Income Security Act (ERISA)) on an employer's behalf for employee retirement benefits. The bill applies to annuity contracts, for private employers,

that are not protected by PBGC (see BACKGROUND).

It applies to both allocated and unallocated annuity contracts. (An unallocated annuity is one that is not issued to and owned by an individual, except to the extent of benefits guaranteed to an individual by an insurer.)

Insurers must provide the disclosure, in writing, to employees who are intended beneficiaries of the annuity contract or pension benefit plan. They must do so no later than 15 days after the contract takes effect.

Disclosure Contents

Under the bill, the disclosure must include:

1. if the annuity contract replaces or supersedes a pension previously provided under ERISA, (a) that the employee will lose protection under ERISA and the PBGC and that state law will govern the employee's future benefits under the contract and (b) information on any change in the taxation of the annuity payments under state law as compared to the taxation of pension benefits under ERISA;
2. the amount and scope of any coverage that the Connecticut Insurance Guaranty Association will provide if the insurer becomes financially impaired or insolvent, and the conditions to qualify for this coverage;
3. the extent to which annuity payments may be subject to creditors' claims or avoidance actions in bankruptcy proceedings;
4. the contract terms, including a (a) schedule of premium payments and (b) description of administrative expenses related to the contract's purchase and maintenance; and
5. how the employee can obtain a copy of the insurance commissioner's most recent financial examination or market

conduct examination, if the insurance statutes allow the report's disclosure.

BACKGROUND

ERISA and PBGC

ERISA sets minimum standards for private pension plans, including standards for participation, vesting, benefit accrual, funding, and pension management responsibility. ERISA also requires plans to provide certain disclosures to participants.

Under ERISA, most private defined benefit pension plans are required to obtain pension benefit insurance through the PBGC. The PBGC provides payment of certain benefits if these plans are terminated.

Connecticut Unfair Insurance Practice Act (CUIPA)

The law prohibits engaging in unfair or deceptive insurance acts or practices. CUIPA authorizes the insurance commissioner to issue regulations, conduct investigations and hearings, issue cease and desist orders, ask the attorney general to seek injunctive relief in superior court, impose fines, revoke or suspend licenses, and order restitution.

Fines may be up to (1) \$5,000 per violation to a \$50,000 maximum or (2) \$25,000 per violation to a \$250,000 maximum in any six-month period if knowingly committed. The law also imposes a fine of up to \$50,000, in addition to or in lieu of a license suspension or revocation, for violating a cease and desist order (CGS § 38a-817).

Collateral Source Rule

In personal injury or wrongful death cases, the law generally requires courts to reduce economic damages by the amount paid to the claimant by specified collateral sources (e.g., health insurance), less the amount paid, contributed, or forfeited by the claimant to secure the collateral source benefit. Any amount the claimant received as a settlement is not considered a collateral source for this purpose.

By law, there is no reduction for (1) collateral sources for which a right of subrogation exists or (2) the amount of collateral sources equal to the reduction in the claimant's economic damages due to his or her percentage of negligence.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 4 (04/02/2014)